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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION OF  
SOUTHERN CALIFORNIA,  
*Plaintiff,*

v.

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT,  
*et al.,*

*Defendants.*

Case No. 2:22-CV-04760-SHK

**STATUS REPORT AND REQUEST  
FOR CASE MANAGEMENT  
CONFERENCE**

Honorable Shashi H. Kewalramani  
United States Magistrate Judge

*ACLU of Southern California v. U.S. ICE, et al.,*

Case No. 2:22-CV-04760-SHK

STATUS REPORT AND REQUEST FOR CASE MANAGEMENT  
CONFERENCE

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*ACLU of Southern California v. U.S. ICE, et al.,*

Case No. 2:22-CV-04760-SHK

STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE

**I. Introduction**

Plaintiff files this Status Report and seeks a Status Conference with the Court because despite Plaintiff's robust efforts to meet and confer, Defendants have refused to provide necessary information routinely provided in other FOIA cases, and declined to agree to a reasonable schedule that will govern timely resolution of this case. Plaintiff seeks the Court's assistance in establishing a framework to address the Parties' disputes and in setting a case management order for prompt resolution of this matter.

Plaintiff ACLU of Southern California ("ACLU So Cal") filed suit in this Freedom of Information Act ("FOIA") Request over two years ago, on July 12, 2022, seeking information about Immigration and Customs Enforcement's ("ICE") practice of releasing immigrants facing immigrant death from its custody, which allows the agency to avoid accountability for their deaths. Throughout this case, Defendants have repeatedly delayed their searches for responsive records, refused to provide basic information such as hit counts necessary for parties to narrow search results to target responsive records and lessen Defendants' processing burden, and misrepresented technological capabilities to conduct targeted searches, provide information about their scope, and de-duplicate records. Order, ECF No. 62 at 11 (noting that "Defendants have accurately determined its abilities to carry out some of Plaintiff's technical suggestions or to compromise on search terms only recently, after Plaintiff sought court-intervention over the parties' disputes.").

Since the Court's partial grant of summary judgment to Plaintiff on July 8, 2024, ECF No. 87, Defendants have continued to delay resolution of this case. Plaintiff files this Status Report and respectfully requests the Court's assistance in resolving unresolved matters at a Case Management Conference. The unresolved issues include: (1) Defendants' production of documents held by the Department of Homeland Security Office of Civil Rights and Civil Liberties ("CRCL") as required

1 by the Court's summary judgment order, ECF No. 87; (2) Defendants' production of  
2 documents in response to Parts 1-3 of Plaintiff's FOIA Request; (3) Defendants'  
3 searches for Part 4 of the Request; (4) a schedule for summary judgment briefing  
4 regarding Parts 5-9 of Plaintiff's FOIA Request.

5 Defendants took the position that a Status Conference to address these matters  
6 was improper and unnecessary, and they declined to join this request or offer their  
7 positions on the issues below.<sup>1</sup> However, they represented that they are available for  
8 a status conference regarding these matters at the following dates and times:

- 9
- November 12, 2024: 12:00-2:30 PM
  - 10 • November 13, 2024: 9:00-10:30 AM; 12:00-1:30 PM
  - 11 • November 14, 2024: 9:00-12:00; 1:30-3:00 PM
  - 12 • November 15, 2024: 9:00-10:00 AM

13 **1. Defendants' Search for and Production of CRCL Records**

14 Plaintiff seeks assistance from the Court to help Parties resolve their dispute over  
15 the appropriate search parameters and processing rate and deadlines for CRCL  
16 records related to Martin Vargas Arellano. On July 8, 2024, the Court granted  
17 summary judgment in favor of Plaintiff, concluding that Defendant DHS's search for  
18 CRCL documents was inadequate, and ordered the parties to meet and confer

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19 <sup>1</sup> Defendants have taken the position that this filing is improper and that Plaintiff  
20 should instead file a noticed motion for the relief it seeks. Plaintiff disagrees. Through  
21 this request, Plaintiff seeks a status conference where the Court and parties can  
22 discuss what case-management framework will best achieve an efficient resolution  
23 of this case. Most of the issues Plaintiff raises in this filing stem from a lack of  
24 information from Defendants. For example, Plaintiff does not know the hit counts  
25 from Defendants' searches or when Defendants plan to move for summary judgment.  
26 Plaintiff hopes that, if the Court sets a status conference, that Defendants may come  
27 to Court prepared with this information. The Court also has authority to issue a case  
28 management order at this conference if it determines that to be the best way to move  
the case forward. If the Court determines at the status conference that briefing is  
required on any issue, Plaintiff requests that the Court order expedited briefing so  
that the issue can be resolved promptly.

1 regarding its search. ECF No. 87. Over three months later, the parties have not been  
2 able to agree on search parameters or a workable timeframe for production.

3 Plaintiff has made a proposal that it believes will result in an efficient resolution  
4 of the outstanding issues for this production. Plaintiff proposed that Defendants  
5 conduct searches and provide Plaintiff with hit counts search terms, as Defendants  
6 have routinely provided in other FOIA cases. *See, e.g.* Ex. A (ICE hit count report in  
7 *ACLU v. ICE*, No. 1:20-cv-3204-RDM (D.D.C.)). Based on those hit counts, Plaintiff  
8 would modify the searches to ensure a reasonable number of hits. Defendants would  
9 then run the modified set of searches and process documents for production within  
10 two months.<sup>2</sup> After this production, Plaintiff would identify any further leads  
11 apparent from the production, and the parties would work together to develop further  
12 searches.

13 Unfortunately, negotiations over this proposal have not been productive. At an  
14 initial conference on July 26, 2024, Plaintiff provided a proposed timeline for the  
15 parties to agree upon search parameters for CRCL documents. Plaintiff sent a list of  
16 proposed search parameters for CRCL on July 31, 2024. Pl.'s Status Rep., ECF No.  
17 92. Plaintiff asked that Defendants provide hit counts for de-duplicated records by  
18 August 8, that the Parties meet and confer by August 14 to finalize search parameters,  
19 and that Defendants produce all responsive documents by October 31, 2024. *Id.*  
20 Defendants did not respond until August 21, 2024, when they stated that they would  
21

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22 <sup>2</sup> Courts have frequently ordered the production of all responsive documents to a  
23 FOIA request within a time-bound period, instead of relying on monthly production  
24 rate schedules. *See, e.g. ACLU v. Dep't of Defense*, 339 F. Supp.2d 501, 505  
25 (S.D.N.Y. 2004) (requiring production or identification of all responsive documents  
26 within one month, represented by government to be 17,000 to 20,000 pages);  
27 *Aguilera v. FBI*, 941 F. Supp. 144, 153 (D.D.C. 1996) (ordering production of  
28 responsive records within one month); *Cleaver v. Kelley*, 427 F. Supp. 80, 81-82  
(D.D.C. 1976) (requiring production of all responsive documents within one month,  
along with index of exemptions).

1 conduct searches of CRCL's Complaint Management System (CMS), and email  
2 accounts for the policy advisor who worked on Vargas Arellano's case, using  
3 specified search parameters. CRCL did not, however, provide a hit count. Plaintiff  
4 emailed Defendants on August 26, and again on September 5, requesting a hit count.  
5 On September 10, Defendants provided a hit count of over 23,454 pages from its  
6 email search, but not for records from CRCL's CMS database, and did not specify  
7 whether the page results were de-duplicated. On September 11, 2024, Plaintiff  
8 replied, requesting that Defendants provide the specific number of pages resulting  
9 from the CMS search, and hit counts for specific search terms and de-duplication and  
10 threading of emails, as it could not otherwise agree to a processing rate without  
11 understanding the quantity of records at issue. Defendants again failed to respond, so  
12 Plaintiff reached out again on September 23. On October 1, Defendants claimed that  
13 "CRCL does not have the ability to provide hit counts but can de-duplicate and de-  
14 thread," and proposed a processing rate of 250 pages per month, with production  
15 starting on November 1. Ex. B (Emails between Parties). After Plaintiff stated that it  
16 would seek a status conference with the Court, Defendants reported on October 18  
17 that they were able to de-duplicate CMS and email records, with a total hit count of  
18 12,155 pages for those searches.

19 Defendants' current course involves processing a total of 12,155 pages at a  
20 rate of 250 pages/month. At this rate, it would take almost **4 years** to complete  
21 processing these documents. Defendants have stated that they would only consider  
22 additional search terms or leads after this production is complete, meaning that the  
23 production will stretch into 2028 or beyond.<sup>3</sup> Defendants have refused to negotiate  
24

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25 <sup>3</sup> Defendants did not agree to all of the search parameters Plaintiff proposed for  
26 CRCL's search, but Plaintiff agreed to defer this issue until after CRCL produced a  
27 hit count, to determine whether a further search would be necessary. *See* Ex. B,  
28 Defendants' Aug. 21, 2024 Email; Plaintiff's Aug. 26, 2024 Email.

1 on their position, and they have stated that they plan to follow this course over  
2 Plaintiff's objections.

3 Importantly, there is significant doubt as to whether all 36,000 pages CRCL  
4 located in response to the Court-ordered search are actually responsive. The Court  
5 limited the scope of that search to records related to Mr. Martin Vargas Arellano.  
6 ECF No. 87 at 36. Based on a CRCL memorandum in the public record, it appears  
7 CRCL investigated Mr. Vargas Arellano's deathbed-release from ICE custody with  
8 a broader investigation into deficient detention conditions at the Adelanto Detention  
9 Center. Ex. C, Memorandum from DHS Office of Civil Rights and Civil Liberties to  
10 Tae Johnson, Regarding Adelanto Processing Center, Jun. 25, 2021. To ensure the  
11 records CRCL located in response to the Court's order are not overinclusive, further  
12 delaying Defendants' processing of *actually* responsive records, it is imperative that  
13 Defendants provide Plaintiff with hit counts for individual search terms so it can  
14 narrow the search results for efficient production.

15 This Court has broad power and discretion to manage litigation in FOIA cases.  
16 "FOIA imposes no limits on courts' equitable powers in enforcing its terms." *Payne*  
17 *Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988). "Unreasonable  
18 delays in disclosing non-exempt documents violate the intent and purpose of the  
19 FOIA, and the courts have a duty to prevent [such] abuses." *Id.* (quoting *Lang v. IRS*,  
20 693 F.2d 907, 910 (9th Cir. 1982)). *See also Jewell v. United States Dep't of Educ.*,  
21 No. 2:22-cv-53-KJD, 2022 WL 3367760, at \*1 (D. Vt. Aug. 16, 2022) (modifying  
22 scheduling order to require agency to provide page counts of results to search in  
23 FOIA case).

24 Plaintiff respectfully requests a status conference with the Court to assist the  
25 parties in understanding the universe of documents at issue, identifying potential  
26 ways to narrow Defendants' production (including by search terms with the  
27



1 assistance of hit counts provided by Defendants), and establishing a deadline for  
2 CRCL's production, in light of the Court's summary judgment order.

3 **2. Parts 1-3 of Plaintiff's FOIA Request**

4 Plaintiff requests the Court's assistance in resolving the production of records by  
5 Defendants in response to Parts 1-3 of the Request.

6 Over a year ago, on October 23, 2023, Plaintiff submitted a Motion requesting a  
7 Scheduling Order, ECF No. 57, seeking the court's assistance in managing ICE's  
8 response to Parts 1-3 of the Plaintiff's Request. ICE had reported that it had over  
9 41,000 pages of records, many of which Plaintiff had noted were duplicative. At  
10 Plaintiff's request to de-duplicate the records, ICE then reported that it had  
11 approximately 10,000 pages left to produce, after de-duplication. ICE, however,  
12 resisted Plaintiff's attempt to shrink that set of records for production and to begin  
13 production of records responsive to Parts 4-9 of the Request. ECF No. 62 at 3.

14 On December 8, 2023, this Court ordered Defendant ICE to increase its  
15 processing rate to 3,000 pages per month, provide Plaintiff with information  
16 necessary to try to reduce the number of pages to be produced regarding Mr. Teka  
17 Gulema, and for the parties to meet and confer to address outstanding issues. ECF  
18 No. 62 at 15. The Court also held Status Conferences on March 4, 2024 and March  
19 20, 2024, and ordered Defendants to provide additional information regarding  
20 production of records related to Mr. Gulema, which formed the bulk of the records.  
21 ECF Nos. 72 and 75. On March 19, 2024, ICE newly reported that it had 31,865  
22 pages remaining related to Mr. Gulema, and that it could not filter the documents by  
23 custodian due to ICE's failure to preserve metadata. ECF No. 74 at 2.<sup>4</sup>

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24  
25 <sup>4</sup> Notably, ICE has produced a total of only 131 pages total for the months of August,  
26 September, and October 2024 combined, all of which were un-threaded email  
27 duplicates of previously provided records regarding Mr. Gulema. ICE processed, but  
28 did not produce 10,405 other pages of records during that time, after determining that  
the records processed were duplicates.



1 Since then, Plaintiff has continued to attempt to resolve the matter. On June 20,  
2 2024, after DHS-OIG produced records referred to it by ICE related to Mr. Gulema,  
3 Plaintiff proposed a framework through which it could waive production of the  
4 remaining 31,865 pages. Plaintiff proposed that Defendants conduct targeted  
5 searches based on highly relevant leads that emerged in the DHS-OIG document  
6 production and provide Plaintiff with a hit count of responsive documents, broken  
7 down by custodian. Pl.'s Jun. 20, 2024 Letter at 2-3. Assuming that these hit counts  
8 indicated that these searches were successful and result in a smaller, more  
9 manageable number of documents, Plaintiff indicated that it would be willing to  
10 waive production of the remaining 31,865 pages. Plaintiff's proposal intended to  
11 significantly shrink the list of pages to be reviewed and speed this case toward a  
12 resolution. However, nearly four months later, Defendants have yet to provide a  
13 requested hit count to enable this negotiation to proceed.

14 On July 23, 2024, ICE stated that it was amenable to conducting an additional  
15 search, but did not provide a list of custodians, search terms, or a hit count, as  
16 requested. On September 10, 2024, Plaintiff further narrowed the search parameters,  
17 provided suggested search terms and custodians, and requested a hit count. On  
18 October 1, 2024, Defendants agreed to conduct a search with Plaintiff's proposed  
19 terms if Plaintiff agreed to waive the remaining records related to Mr. Gulema (now  
20 numbering approximately 25,000 pages), but again refused to provide a hit count of  
21 the de-duplicated records, as requested. After Plaintiff again requested a hit count,  
22 ICE refused to provide one on October 15, instead asking how a hit count would  
23 inform whether Plaintiff would agree to waive production of the approximately  
24 25,000 pages. Plaintiff remains hopeful it can waive production of the remaining  
25 pages and speed this issue toward resolution, but—as it explained in June and again  
26 in October—needs hit count information from ICE to ensure that the result is neither  
27 voluminous nor empty before it can make any agreement. Notably, ICE routinely

1 provides hit counts for search terms in FOIA cases to enable parties to tailor  
2 production, but has not done so in this case. *See* Ex. A (ICE hit count report in *ACLU*  
3 *v. ICE*, No. 1:20-cv-3204-RDM (D.D.C.)).

4 In light of the protracted negotiations over this matter, Plaintiff now requests the  
5 Court's assistance in establishing a framework to resolve this matter. Plaintiff  
6 believes that this matter could be quickly finalized if ICE provided a hit count for de-  
7 duplicated records under the terms proposed by Plaintiff, and to the extent that  
8 Plaintiff wanted to further reduce the volume of records for production or add further  
9 search terms, for ICE to timely provide hit counts in response to suggested search  
10 terms, as it regularly does in other FOIA cases, to enable productive negotiation, and  
11 a joint status report to the Court regarding the Parties' progress.

### 12 **3. Part 4**

13 Plaintiff requests the Court's assistance in resolving a dispute over Defendants'  
14 response to Part 4 of its Request. Part 4 of the Request relates to directives, policies,  
15 procedures, protocols, or trainings regarding ICE's deathbed releases. Defendants  
16 have conducted a narrow search, but Plaintiff requested that Defendants search ICE's  
17 Office of Regulatory Affairs and Policy (ORAP) with search terms "death," "life  
18 support," "critical condition," "intensive care," "ICU," and "hospice," as well as for  
19 ICE Directive 11003.4. On October 1, 2024, ICE agreed to search for these records,  
20 but on the condition that Plaintiff "will agree not to challenge the searches conducted  
21 for Part 4 in this litigation." Plaintiff declined to waive its ability to challenge the  
22 adequacy of search for Part 4, as it still lacks full information as to responsive records  
23 within ICE's possession without seeing the results of the search. On October 15,  
24 Defendants stated it would "endeavor" to provide a hit count for this search by  
25 November 22, 2024, but repeated its condition that Plaintiff "will agree not to  
26 challenge the searches conducted for Part 4 in this litigation."

1 Plaintiff respectfully requests the Court's assistance in resolving this matter.  
2 Plaintiff believes that the matter could be quickly resolved if Defendants provided a  
3 hit count of the agreed-upon search terms within 7 days of the conference, and begin  
4 production of responsive records within 30 days of the conference, or if the  
5 Defendant made clear that they would not conduct a search on the agreed-upon terms  
6 so that the issue can be briefed at summary judgment, within 7 days of the conference.

7 **4. Summary Judgment for Parts 5-9 of Plaintiff's FOIA Request**

8 Plaintiff also requests the Court's assistance in establishing a schedule for  
9 summary judgment briefing. On July 23, 2024, ICE stated that it had completed  
10 production of documents responsive to Parts 4-9 of Plaintiff's Request. Other than  
11 the outstanding discussions between the parties for Part 4, ICE has declined to  
12 perform additional searches for responsive documents that Plaintiff has proposed. On  
13 September 23, 2024, Plaintiff proposed a summary judgment briefing schedule for  
14 Defendant ICE and Parts 4-9 in this case. On October 1, 2024, ICE declined to agree  
15 to a briefing schedule for Part 4 as it is conducting an additional search, but agreed  
16 to stipulate to a briefing schedule. On October 7, 2024, Plaintiff proposed that the  
17 parties enter a summary judgment schedule for Parts 5-9 and provided proposed  
18 dates. On October 15, 2024, ICE stated, without explanation, that it did not agree to  
19 Plaintiff's proposal.

20 Plaintiff requests the court's assistance in setting a briefing schedule. Plaintiff  
21 proposes the briefing schedule as detailed below. Plaintiff requests that Court limit  
22 ICE to one version of the *Vaughn* index during briefing. Defendant DHS-OIG filed  
23 a modified version of the *Vaughn* index with its cross-motion for summary judgment,  
24 prejudicing Plaintiff. Specifically, to ensure this does not occur again, Plaintiff  
25 proposes that ICE file the first brief and that the Court explicitly limit it to the *Vaughn*  
26 index filed with that brief.

- November 27, 2024: ICE produces a search summary, including dates of searches, search terms used, custodians and file locations searched, and number of pages produced
- November 27, 2024: Plaintiff provides Defendants with a list of withholdings for inclusion in a *Vaughn* index
- December 20, 2024: Defendants will produce a *Vaughn* index and file a Motion for Summary Judgment regarding Parts 5-9
- January 20, 2025: Plaintiff files Cross-Motion for Summary Judgment/Response
- February 10, 2025: Defendant files Response/Reply brief
- March 3, 2025: Plaintiff files Reply brief
- March 17, 2025: Summary Judgment Hearing

If Defendants decline to file a cross-motion for summary judgment, Plaintiff is amenable to filing a partial motion for summary judgment on Defendants' inadequate search of documents for Parts 5-9, and will reserve a summary judgment challenge to challenge Defendants' exemptions in a separate round of briefing. If that is the case, Plaintiff proposes the following briefing schedule:

- Plaintiff's Partial Summary Judgment Brief: December 13, 2024
- Defendants' Response Brief; January 10, 2025
- Plaintiff's Reply Brief: January 24, 2025
- Summary Judgment Hearing: January 31, 2025

Respectfully submitted this 30<sup>th</sup> day of October, 2024.

/S/ Laboni A. Hoq

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